IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8119 of 2005
to
SPECIAL CIVIL APPLICATIONNo 8129 of 2005
with
SPECIAL CIVIL APPLICATION No 8132 of 2005
and
Special Civil Application No. 8133 of 2005

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SHIV-BHADRA EDUCATIONAL AND CHARITABLE TRUST

Versus

COMMISSIONER

Appearance:
MR BS PATEL for Petitioners.
Mr. Hasit D. Dave, AGP for Respondents.

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 05/05/2005

ORAL JUDGEMENT

Rule. Shri Hasit D.Dave, learned AGP appears on advance copy and waives service of Rule on behalf of the

respondents.

2. In all these petitions the petitioners have challenged the order dated 27.12.2004 passed by the District Education Officer, Junagadh by which the said DEO has called upon the petitioners to refund/return the amount of Rs. 3 lakhs which was paid by way of Computer grant.

3. Shri BS Patel, learned advocate appearing for the petitioners has submitted that apart from the merits of the case the impugned order dated 27.12.2004 is in breach of principles of natural justice as before passing the said order of recovery no opportunity had been given by the DEO, Junagadh nor any show cause notice issued upon the petitioner. It is further submitted that the impugned order is passed on the basis of some audit report of A.G., Rajkot and a copy of which is also not given to the petitioners. Under the circumstances it is requested to quash and set aside the impugned order dated 27.12.2004.

4. Shri HD Dave, learned AGP appears on behalf of the respondents on advance copy and with necessary instructions. He has submitted that the impugned decision has been taken on the basis of the order passed by the Commissioner, Mid Day Mean & Schools which is based on the Audit Report by A.G., Rajkot. However, he is not in a position to satisfy this Court whether before the passing the impugned order dated 27.12.2004 the petitioners were heard or not. From the bare reading of the impugned order dated 27.12.2004 it appears that before passing such order the petitioners were neither heard nor given any opportunity to represent their case.

5. Under the circumstances, the impugned order dated 27.12.2004 being in breach of principles of natural justice requires to be quashed and set aside and is accordingly quashed and set aside. The matter is remanded to the Commissioner, Mid Day Meal & Schools, Gujarat State for taking appropriate decision in accordance with law and on merits. The impugned order dated 27.12.2004 itself is directed to be treated as show cause notice and the petitioners are directed to file their reply to the same before the Commissioner, Mid Day Meal & Schools within the period of two weeks from today. On receipt of such reply, the Commissioner, Mid Day Meal & Schools, Gujarat State, shall take appropriate decision in accordance with law and on merits within the period of four weeks thereafter. In the meantime, the petitioners shall approach the office of respondent No.1 for the

purpose of getting a copy of the Audit Report of A.G., Rajkot which is directed to be given to the petitioner immediately. It is, however made clear that this Court has not expressed any thing on merits of the case and the order is set aside only on the ground that it is in breach of principles of natural justice. Rule is made absolute in all the matters to the aforesaid extent with no order as to costs.

{ M.R. Shah, J. }

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